

FILED 10 JUL 8 8 20 USDC-ORN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN LOUIS ZOLKOSKE,
Petitioner,
v.

Civ. No. 09-114-CL

DON MILLS,
Respondent.

ORDER

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). When either party objects to any portion of a Magistrate Judge's Report and Recommendation, the district court must make a de novo determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F. 2d 1309, 1313 (9th Cir. 1981).

Here, petitioner objects to the Report and Recommendation. I

have, therefore, given this matter de novo review. I agree with the Report and Recommendation that petitioner has failed to show that his attorney's failure to object to the upward departure at sentencing was ineffective assistance of counsel.

CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#29) is adopted. The petition for writ of habeas corpus (#1) is dismissed. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is denied. See 28 U.S.C. § 2253(2).

IT IS SO ORDERED.

DATED this 7 day of July, 2010.

A handwritten signature in cursive script, reading "Owen M. Panner", is written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT JUDGE